

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AI HUA MIAO, et al.,

Plaintiffs,

v.

CAIE FOODS PARTNERSHIP, LTD., et
al.,

Defendants.

Case No. 3:22-CV-00463-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

Plaintiff Ai Hua Miao (“Miao”) commenced this action against Caie Foods Partnership, Ltd. and Caie Foods Production, LLC (collectively “Defendants”) on October 20, 2022. (ECF No. 1.) On November 17, 2022, Defendants filed an answer to Miao’s complaint. (ECF No. 11.) Thereafter, on March 28, 2023, Miao filed a first amended complaint, (ECF No. 30), which Defendants answered on April 12, 2023, (ECF No. 31).

On July 12, 2024, Defendants’ counsel, Flynn Giudici, PLLC, filed a motion to withdraw as counsel. (ECF No. 56.) On July 31, 2024, the Court granted Defense Counsel’s motion to withdraw as counsel and ordered Defendants to file a substitution of counsel on or before August 30, 2024. (ECF No. 57.) The Court advised Defendants that corporations may only appear in federal court through an attorney. (*See id.* (citing *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244 (9th Cir. 1993); *Licht v. America West Airlines*, 40 F.3d 1058 (9th Cir. 1994).) Defendants failed to file a substitution of counsel, so the Court *sua sponte* granted Defendants an extension of time to October 3, 2024 to do so. (ECF No. 59.) The Court again advised Defendants that it may only appear in federal court through an attorney, and additionally advised

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 Defendants that if substitute counsel had not entered an appearance by October 3, 2024,
2 the Court would issue a Report and Recommendation that Defendants' answer be
3 stricken, and a default be entered. (*Id.*) To date, a substitution of counsel has not been
4 filed.

5 As discussed, Defendants were advised on numerous occasions that a corporation
6 may only appear in federal court when represented by counsel. (See ECF Nos. 57, 59.)
7 The law is clear in the Ninth Circuit to that effect. As the Court of Appeals held in *U.S.*
8 *High Country Broadcasting Co., Inc.*, 3 F.2d at 1245: "[a] corporation may appear in
9 federal court only through licensed counsel," citing *Rowland v. California Men's Colony*,
10 506 U.S. 194, 202 (1993) and 28 U.S.C. § 1654.

11 The language of the Ninth Circuit's decision in the *America West Airlines* case is
12 also unequivocal, "Corporations and other unincorporated associations must appear in
13 court through an attorney." *In re America West Airlines*, 40 F.3d 1058, 1059 (9th Cir.
14 1994). See also *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697–98 (9th Cir.
15 1987); *Church of the New Testament v. United States*, 783 F.2d 771, 77–74 (9th Cir.
16 1986).

17 There can be no dispute that a corporate entity may proceed in federal court only
18 when represented by licensed counsel. A corporation simply may not proceed pro se.

19 Defendants have been repeatedly advised of their obligation to defend this action
20 through licensed counsel. Due to the failure of Defendants to obtain substitute counsel,
21 the Court recommends that Defendants' answer, (ECF No. 31), be stricken and a default
22 be entered against Defendants by reason of their failure to "otherwise defend" this action.
23 Fed. R. Civ. P. 55(a).

24 The parties are advised:

25 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
26 Practice, the parties may file specific written objections to this Report and
27 Recommendation within fourteen days of receipt. These objections should be entitled
28 "Objections to Magistrate Judge's Report and Recommendation" and should be

1 accompanied by points and authorities for consideration by the District Court.

2 2. This Report and Recommendation is not an appealable order and any
3 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
4 District Court's judgment.

5 **I. RECOMMENDATION**

6 **IT IS THEREFORE RECOMMENDED** that Defendants' answer, (ECF No. 31), be
7 **STRICKEN.**

8 **IT IS FURTHER RECOMMENDED** that a default be entered against Defendants
9 by reason of their failure to "otherwise defend" this action. Fed. R. Civ. P. 55(a).

10 **DATED:** October 7, 2024.

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13 **UNITED STATES MAGISTRATE JUDGE**
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